

## Surface Transportation Board, DOT

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whom information is sought to provide information to the Board which, absent assurances of confidentiality, they might otherwise be unwilling to give. However, if practicable, material identifying a confidential source shall be extracted or summarized in a manner which protects the source, and the summary or extract shall be provided to the requesting individual.

(c) Complaints and investigatory materials compiled by the Board's Office of Inspector General are exempt from the provisions of 5 U.S.C. 552a and the regulations in this part, pursuant to 5 U.S.C. 552a(j)(2), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) to the extent that the system of records pertains to the enforcement of criminal laws. Complaint and investigatory materials compiled by the Board's Office of Inspector General for law enforcement purposes also are exempt from the provisions of 5 U.S.C. 552a and the regulations of this part, pursuant to 5 U.S.C. 552a(k)(2).

[41 FR 3087, Jan. 21, 1976, as amended at 58 FR 15291, Mar. 22, 1993; 58 FR 28520, May 14, 1993]

## PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

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AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

SOURCE: 67 FR 60167, Sept. 25, 2002, unless otherwise noted.

### § 1011.1 General.

(a) This part describes the organization of the Board, and the assignment of jurisdiction and the responsibilities to the Board, individual Board Mem-

bers or employees, and employee boards.

(b) As used in this part, *matter* includes any case, proceeding, question, or other matter within the Board's jurisdiction; and *decision* includes any decision, ruling, order, or requirement of the Board, an individual Board Member or employee, or an employee board.

### § 1011.2 The Board.

(a) The Board reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Board, except as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Board.

(4) All other matters submitted for decision except those assigned to an individual Board Member or employee or an employee board.

(5) Except for matters assigned to the Chairman of the Board under § 1011.4(a)(6):

(i) The determination of whether to reconsider a decision being challenged in court;

(ii) The disposition of matters that have been the subject of an adverse decision by a court; and

(iii) The determination of whether to file any memorandum or brief or otherwise participate on behalf of the Board in any court.

(6) The disposition of all matters involving issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under the authority delegated by § 1011.7(b). Appeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof.

(b) The Board may bring before it any matter assigned to an individual

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Board Member or employee or employee board.

#### **§ 1011.3 The Chairman, Vice Chairman, and Board Member.**

(a)(1) The Chairman of the Board is appointed by the President as provided by 49 U.S.C. 701(c)(1). The Chairman has authority, duties, and responsibilities assigned under 49 U.S.C. 701(c)(2) and described in this part.

(2) The Vice Chairman is elected by the Board for the term of 1 calendar year.

(3) In the Chairman's absence, the Vice Chairman is acting Chairman, and has the authority and responsibilities of the Chairman. In the Vice Chairman's absence, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the remaining Board Member is acting Chairman, and has the authority and responsibilities of the Chairman and Vice Chairman.

(b)(1) The Chairman is the executive head of the Board and has general responsibilities for:

(i) The overall management and functioning of the Board;

(ii) The formulation of plans and policies designed to assure the effective administration of the Interstate Commerce Act and related Acts;

(iii) Prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems; and

(iv) The development and use of effective staff support to carry out the duties and functions of the Board.

(2) The Chairman of the Board exercises the executive and administrative functions of the Board, including:

(i) The appointment, supervision, and removal of Board employees, except those in the immediate offices of Board Members other than the Chairman;

(ii) The distribution of business among such personnel and among administrative units of the Board; and

(iii) The use and expenditures of funds.

(3) In carrying out his or her functions, the Chairman is governed by general policies of the Board and by such regulatory decisions, findings, and

determinations as the Board by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices is subject to the approval of the Board. All heads of offices report to the Chairman.

(c)(1) The Chairman presides at all sessions of the Board and sees that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the Clearance Clerk or the person designated by the Board for that purpose.

(2) Regular sessions of the Board are provided for by Board regulations. The Chairman may call the Board into special session to consider any matter or business of the Board. The Chairman shall convene a special session to consider any matter or business on request of a member of the Board unless a majority of the Board votes either not to hold a special session or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the two immediately preceding sentences of this paragraph, on the written request of any member of the Board, the Chairman shall schedule a Board conference to discuss and vote on significant Board proceedings involving major transportation issues, and such conference shall be held within a reasonable time following the close of the record in the involved proceeding.

(3) The Chairman exercises general control over the Board's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and speaks for the Board in all matters where an official expression of the Board is required.

(5) The Chairman brings any delay or failure in the work to the attention of the supervising Board Member, employee, or board, and initiates ways of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or *ad hoc* committees of the Board as he or she considers necessary.

(7) The Chairman may reassign related proceedings to a board of employees and may remove a matter from an individual Board Member or employee

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or employee board for consideration and disposition by the Board.

(8) The Chairman may authorize any officer, employee, or administrative unit of the Board to perform a function vested in or delegated to the Chairman.

(9) The Chairman authorizes the institution of investigations on the Board's own motion, and their discontinuance at any time before hearing.

(10) The Chairman approves for publication all publicly issued documents by an office, except:

(i) Those authorized or adopted by the Board or an individual Board Member that involve decisions in formal proceedings;

(ii) Decisions or informal opinions of an office; and

(iii) Documents prepared for court cases or for introduction into evidence in a formal proceeding.

[67 FR 60167, Sept. 25, 2002, as amended at 74 FR 52903, Oct. 15, 2009]

### § 1011.4 Delegations to individual Board Members.

(a) The following matters are referred to the Chairman of the Board:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR part 1133.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Board.

(6) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of:

(i) A decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Board

personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure; or

(ii) A decision in which a court finds under 5 U.S.C. 552a(g)(4) that Board personnel acted intentionally or willfully in violating the Privacy Act.

(7) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(8) Designation in writing of employees authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment pursuant to 49 U.S.C. 11144, 14122, and 15722.

(9) Authority to act alone to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available.

(b) The following matters are referred to the Vice Chairman of the Board:

(1) Matters within the jurisdiction of the Accounting Board if certified to the Vice Chairman by the Accounting Board or if removed from the Accounting Board by the Vice Chairman.

(2) Matters involving the admission, disbarment, or discipline of practitioners before the Board under 49 CFR part 1103.

(c) The Chairman, Vice Chairman, or other Board Member to whom a matter is assigned under this part may certify such matter to the Board.

(d) The Chairman shall notify all Board Members that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a)(2) or (3) of this section. The Chairman shall also inform all Board Members of the decision on that petition before service of such decision. At the request of a Board Member, made at any time before the Chairman's decision is served, the petition will be referred to the Board for decision.

[67 FR 60167, Sept. 25, 2002, as amended at 68 FR 8726, Feb. 25, 2003]

### § 1011.5 Employee boards.

This section covers matters assigned to the Accounting Board, a board of employees of the Board.

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(a) The Accounting Board has authority:

(1) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the Interstate Commerce Act, and from the regulations governing accounting and reporting forms;

(2) To prescribe rates of depreciation to be used by railroad and water carriers;

(3) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the Interstate Commerce Act; and

(4) To grant extensions of time for filing annual, periodic, and special reports in matters that do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(b) The board may certify any matter assigned to it to the Board.

### § 1011.6 Delegations of authority by the Chairman.

(a)(1) This section provides for delegations of authority by the Chairman of the Surface Transportation Board to individual Board employees.

(2) The Chairman of the Board may remove for disposition any matter delegated under this section, and any matter delegated under this section may be referred by the Board employee to the Chairman for disposition.

(b) The Board will decide appeals from decisions of employees acting under authority delegated under this section. Appeals must be filed within 10 days after the date of the employee's action, and replies must be filed within 10 days after the due date for appeals. Appeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(c)(1) As used in this paragraph, *procedural matter* includes, but is not limited to, the assignment of the time and place for hearing; the assignment of proceedings to administrative law judges; the issuance of decisions direct- ing special hearing procedures; the establishment of dates for filing state- ments in cases assigned for hearing under modified (non-oral hearing) pro-

cedure; the consolidation of pro- ceedings for hearing or disposition; the postponement of hearings and proce- dural dates; the waiver of formal speci- fications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it include postponement of the effective date of:

(i) Decisions pending judicial review,

(ii) Decisions of the entire Board,

(iii) Cease and desist orders, or

(iv) Final decisions where petitions for discretionary review have been filed under 49 CFR 1115.3.

(2) Unless otherwise ordered by the Board in individual proceedings, au- thority to dispose of procedural mat- ters is delegated to administrative law judges or Board Members in pro- ceedings assigned to them.

(3) Unless otherwise ordered by the Board in individual proceedings, au- thority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an admin- istrative law judge or a Board Member, is assigned to the Director of the Office of Proceedings. The Director of the Of- fice of Proceedings shall also have au- thority, unless otherwise ordered by the Chairman or by a majority of the Board in individual proceedings, to de- cide whether complaint proceedings shall be handled under the modified procedure or be assigned for oral hear- ings. In carrying out these duties, the Director of the Office of Proceedings shall consult, as necessary, with the General Counsel and the Director of any Board office to which an individual proceeding has been assigned.

(d) Except as provided at 49 CFR 1113.3(b)(1), authority to dismiss a com- plaint on complainant's request, or an application on applicant's request, is delegated to the Director of the Office of Proceedings.

(e) Authority to grant or deny access to waybills and to statistics reported under orders of the Board is delegated to the Director of the Office of Eco- nomics, Environmental Analysis, and Administration.

(f) Certain accounts in the Uniform Systems of Accounts, 49 CFR parts 1200 through 1207, require Board approval to

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use. Authority to grant or deny requests for use of these accounts is delegated to the Director and Associate Director of the Office of Economics, Environmental Analysis, and Administration and the Chief of the Section of Economics.

(g) The Director of the Office of Proceedings is delegated authority, under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, to:

(1) Sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, that if adopted by the Board, will not have a significant economic impact on a substantial number of small entities; and

(2) Sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis.

(h) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

[67 FR 60167, Sept. 25, 2002, as amended at 74 FR 52904, Oct. 15, 2009]

### **§ 1011.7 Delegations of authority by the Board to specific offices of the Board.**

(a) *Office of Proceedings.* (1) The Director of the Office of Proceedings is delegated the following authority:

(i) Whether (in consultation with involved Offices) to waive filing fees set forth at 49 CFR 1002.2(f).

(ii) To issue, on written request, informal opinions and interpretations (exclusive of informal opinions and interpretations on carrier tariff provisions), which are not binding on the Board. In issuing informal opinions or interpretations, the Director of the Office of Proceedings shall consult with the Directors of the appropriate Board offices. Such requests must be directed to the Director of the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001. Authority to issue informal opinions and interpretations on carrier tariff provisions is delegated at paragraph (b)(2) of this section to the Office of Public As-

sistance, Governmental Affairs, and Compliance.

(2) In addition to the authority delegated at 49 CFR 1011.6(c)(3), (d), (g), and (h), the Director of the Office of Proceedings shall have authority initially to determine the following:

(i) Whether to designate abandonment proceedings for oral hearings on request.

(ii) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10904(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations.

(iii) Whether:

(A) To impose, modify, or remove environmental or historic preservation conditions; and

(B) In abandonment proceedings, to impose public use conditions under 49 U.S.C. 10905 and the implementing regulations at 49 CFR 1152.28.

(iv) In abandonment proceedings, when a request for interim trail use/rail banking is filed under 49 CFR 1152.29, to determine whether the National Trails System Act, 16 U.S.C. 1247(d), is applicable and, where appropriate, to issue Certificates of Interim Trail Use or Abandonment (in application proceedings) or Notices of Interim Trail Use or Abandonment (in exemption proceedings).

(v) In any abandonment proceeding where interim trail use/rail banking is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).

(vi) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

(vii) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10904 and at the railroad's request:

(A) In application proceedings, immediately issuing decisions authorizing abandonment or discontinuance; and

(B) In exemption proceedings, immediately vacating the decision that postponed the effective date of the exemption.

(viii) In proceedings under the Feeder Railroad Development Program under

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49 U.S.C. 10907 and the implementing regulations at 49 CFR part 1151:

(A) Whether to accept or reject primary applications under 49 CFR 1151.2(b); competing applications under section 1151.2(c); and incomplete applications under 49 CFR 1151.2(d).

(B) Whether to grant waivers from specific provisions of 49 CFR part 1151.

(ix) In exemption proceedings subject to environmental or historic preservation reporting requirements, to issue a decision, under 49 CFR 1105.10(g), making a finding of no significant impact where no environmental or historic preservation issues have been raised by any party or identified by the Board's Section of Environmental Analysis.

(x) Whether to issue notices of exemption under 49 U.S.C. 10502:

(A) For acquisition, lease, and operation transactions under 49 U.S.C. 10901 and 10902 and the implementing regulations at 49 CFR part 1150, subparts D and E;

(B) For connecting track constructions under 49 U.S.C. 10901 and the implementing regulations at 49 CFR 1150.36;

(C) For rail transactions under 49 U.S.C. 11323 and the implementing regulations at 49 CFR 1180.2(d); and

(D) For abandonments and discontinuances under 49 U.S.C. 10903 and the implementing regulations at 49 CFR 1152.50.

(xi) When an application or a petition for exemption for abandonment is filed, the Director will issue a notice of that filing pursuant to 49 CFR 1152.24(e)(2) and 49 CFR 1152.60, respectively.

(xii) Whether to issue a notice of exemption under 49 U.S.C. 13541 for a transaction under 49 U.S.C. 14303 within a motor passenger carrier corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.

(xiii) Whether to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C.

(xiv) Whether to waive the regulations at 49 CFR part 1152, subpart C, on appropriate petition.

(xv) To reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105.

(xvi) To reject applications by BNSF Railway Company to abandon rail lines in North Dakota exceeding the 350-mile cap of section 402 of Public Law 97–102, 95 Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102–143, section 343 (Oct. 28, 1991).

(xvii) To authorize parties to a proceeding before the Board, upon mutual request, to participate in mediation with a Board-appointed mediator, for a period of up to 30 days and to extend the mediation period at the mutual request of the parties.

(xviii) To authorize a proceeding to be held in abeyance while mediation procedures are pursued, pursuant to the mutual request of the parties to the matter.

(xix) To order arbitration of program-eligible matters under the Board's regulations at 49 CFR part 1108, or upon the mutual request of parties to a proceeding before the Board.

(b) *Office of Public Assistance, Governmental Affairs, and Compliance.* The Office of Public Assistance, Governmental Affairs, and Compliance is delegated the authority to:

(1) Reject tariffs and railroad transportation contract summaries filed with the Board that violate applicable statutes, rules, or regulations. Any rejection of a tariff or contract summary may be by letter signed by or for the Director, Office of Public Assistance, Governmental Affairs, and Compliance.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Board.

(3) Grant or withhold special tariff authority granting relief from the provisions of 49 CFR part 1312. Any grant or withholding of such relief may be by letter signed by or for the Director, Office of Public Assistance, Governmental Affairs, and Compliance.

(4) Resolve any disputes that may arise concerning the applicability of motor common carrier rates under 49 U.S.C. 13710(a)(2).

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(5) Issue orders by the Director in an emergency under 49 U.S.C. 11123 and 11124 if no Board Member is reasonably available.

[75 FR 30711, June 2, 2010, as amended at 78 FR 29079, May 17, 2013]

### PART 1012—MEETINGS OF THE BOARD

Sec.

1012.1 General provisions.

1012.2 Time and place of meetings.

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1012.4 Public participation.

1012.5 Transcripts; minutes.

1012.6 Petitions seeking to open or close a meeting.

1012.7 Meetings which may be closed to the public.

AUTHORITY: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

SOURCE: 42 FR 13796, Mar. 11, 1977, unless otherwise noted.

#### § 1012.1 General provisions.

(a) The regulations contained in this part are issued pursuant to the provisions of 5 U.S.C. 552b(g), added by section 3(a) of the Government in the Sunshine Act, Pub. L. 94-409 (Act), and section 17(3) of the Interstate Commerce Act. They establish procedures under which meetings of the Surface Transportation Board (Board) are held. They apply to oral arguments as well as to deliberative conferences. They apply to meetings of the Board. They include provisions for giving advance public notice of meetings, for holding meetings which may lawfully be closed to the public, and for issuing minutes and transcripts of meetings.

(b) The words *meeting* and *conference* are used interchangeably in this part to mean the deliberations of at least a majority of the members of the Board, where such deliberations determine or result in the joint conduct or disposition of official Board business. They do not include meetings held to determine whether some future meeting should be open or closed to the public. They do not include the deliberations of members of boards of employees of the Board.

(c) These regulations are not intended to govern situations in which members of the Board consider individ-

ually and vote by notation upon matters which are circulated to them in writing. Copies of the votes or statements of position of all Board Members eligible to participate in action taken by notation voting will be made available, as soon as possible after the date upon which the action taken is made public or any decision or order adopted is served, in a public reading room or other easily accessible place within the Board, or upon written request to the Records Officer.

[42 FR 13796, Mar. 11, 1977, as amended at 64 FR 53266, 53267, Oct. 1, 1999; 74 FR 52905, Oct. 15, 2009]

#### § 1012.2 Time and place of meetings.

(a) Conferences, oral arguments, and other meetings are held at the Board's offices located at 1925 K Street, NW, Washington, DC, unless advance notice of an alternative site is given. Room assignments will be posted at the Board on the day of the meeting.

(b) Regular Board conferences are held on the first and third Tuesdays of each month, or on the following day if the regular conference day is a holiday. Oral arguments before the Board are normally scheduled on the first or third Wednesday of each month. Regular Board conferences and oral arguments before the Board normally begin at 9:30 a.m. A luncheon recess is taken at approximately noon, and other recesses may be called by the presiding officer. Times for reconvening following a recess, or on subsequent days if a conference or oral argument lasts more than one day, are set by the presiding officer at the time the recess is announced.

(c) Special Board conferences or oral arguments are scheduled by the Chairman of the Board.

(d) If one or more portions of the same meeting are open to the public while another portion or other portions are closed, all those portions of the meeting which are open to the public are scheduled at the beginning of the meeting agenda, and are followed by those portions which are closed.

[42 FR 13796, Mar. 11, 1977, as amended at 64 FR 53267, Oct. 1, 1999]